

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1598 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

BHARAT @ BHAGIRATH SHASHIKANT BRAHMAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1598 of 2003
MR AR SHAIKH for Petitioner No. 1
MS NANDINI JOSHI, AGP for Respondent No. 1-3
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CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 21/05/2003

ORAL JUDGEMENT

1. The petitioner, in this petition, has challenged the order of detention dated 28.11.2002 passed by the Commissioner of Police, Rajkot, the respondent no.2

herein. The petitioner is detained under section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 (in short 'the Act'). In the grounds of detention of even date supplied to the petitioner, the detaining authority has placed reliance on five cases registered against the petitioner at Rajkot Police Station as well as Jetalsar Police station for the alleged offences punishable under sections 379, 392, 114 of the IPC. All the cases are pending for trial. Over and above these five cases, the detaining authority has also referred to the incidents alleged to have taken place on 17.7.2002 and 25.7.2002 wherein the petitioner is involved in illegal activities for which the statements of two witnesses have been recorded whose identity is not disclosed claiming privilege under section 9(2) of the Act. Considering the above material, the detaining authority has recorded a finding that the detenu being a dangerous person within the definition of section 2(c) of the Act, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, the detention of the petitioner is necessary and, therefore, while exercising powers under section 3(2) of the Act, the order of detention has been passed.

2. The learned Counsel for the petitioner has raised many contentions while challenging the order of detention. However, it is not necessary for me to deal with each and every contention in view of the fact that the petition is required to be allowed on the ground of delay in passing the impugned order. As can be seen from the criminal cases registered against the petitioner, the last offence is registered on 17.7.2002. No explanation is coming forth regarding passing the order of detention after about four months. True, the detaining authority has relied upon the incidents which are not registered alleged to have taken place on 17.7.2002 and 25.7.2002. Even for the said incident, the statements of concerned witnesses are recorded on 29.9.2002 i.e. also after about two months. The detaining authority also took two months to verify those statements i.e. the detaining authority verified those statements on 26.11.2002. Even this delay is also not explained. I fail to understand that if the allegations of two unregistered cases were really of such a grave nature, why cases have not been registered against the detenu. Therefore, there appears to be some substance in the contention of the petitioner that these two cases have been referred to only with a view to cover up the gap or to give life to a stale case. This unexplained delay of about four months, in my opinion, makes the ground of detention not proximate vitiating the order of detention.

3. In an identical situation, this Court, in the case of Elesh N.Patel Vs. Commissioner of Police, Ahmedabad City, reported in 1997(1) GLH 381, allowed the petition and quashed and set aside the order of detention. In that view of the matter, this petition is required to be allowed only on the ground of delay in passing the impugned order.

4. In the result, the petition is allowed. The impugned order of detention dated 28.11.2002 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is accordingly made absolute. Direct Service.

(Kshitij R.Vyas,J.)

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